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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 003312

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DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [OSCE](#) [EU](#) [TU](#)

SUBJECT: TURKEY: ANTI-TERROR BILL RAISES CONCERNS AMONG REFORM SUPPORTERS

REF: A. ANKARA 2206

[1](#)B. ANKARA 2854

Classified by DCM Nancy McEldowney; reasons 1.5 (b) and (d).

[11.](#) (C) Summary: European Commission (EC) officials in Ankara, as well as Turkish scholars and human rights activists, argue that a draft anti-terror bill currently under parliamentary review (reftels) could roll back some of the progress gained during Turkey's EU reform process and heighten tensions between security forces and Kurds in the southeast. Critics say elements of the bill would restrict freedom of expression and due process, and give prosecutors broad authority to try common criminals as terrorists. The chairman of the parliamentary committee reviewing the legislation told us he is aware of the concerns, and said MPs will address them. The GOT hopes to adopt the legislation by July. End Summary.

EC Raises Concerns...

[12.](#) (C) EC representatives in Ankara raised a number of concerns about the bill in an internal report distributed to member-state embassies. Some of the concerns covered in the report mirror those reported reftel A. Others include:

-- Terrorist Propaganda: The current bill states that, "A person who makes propaganda in support of a terrorist organization or its purposes shall be punished with a prison sentence of one to three years." The EC, in its report, states that the reference to "purposes" would allow prosecutors to charge persons who share the same goal as a terrorist organization, even if they advocate non-violent means. "With this sentence," states the report, "there is no longer a difference between those who resort to force and violence in order to realize an objective, and those who defend that the same objective should be reached through democratic means. For instance, a journalist who advocates the right to education in Kurdish but who is not part of the PKK may be considered a terrorist because the PKK advocates the same goal." This portion of the bill is similar to an article that Parliament removed from the anti-terror law in 2003 as part of the EU reform process.

-- Media Censorship: The bill would authorize a judge to shut down a media outlet for a certain, unspecified period if he determines the outlet is praising or encouraging terrorism. In "urgent" cases, a public prosecutor would have this authority. The EC maintains in its report that this "very vague" article is similar to laws that were revoked during earlier EU reforms. The EC also states that the article "is likely to violate the related provisions of the European Convention on Human Rights."

-- "Terror Crimes" List: The bill lists dozens of crimes that can be charged as terrorist offenses if committed in support of a terrorist organization. These include crimes such as looting, burning the flag, and blackmail. According to the EC report, a person convicted of referring to imprisoned PKK leader Abdullah Ocalan as "Mr. Ocalan" could be charged under the anti-terror bill for "praising" a terrorist. If these types of crimes are prosecuted under the anti-terror law, the punishments would be increased by half.

¶13. (C) The EC report further asserts that the bill could exacerbate tensions in Turkey's heavily Kurdish southeast. "Aside from the technical issues, there is widespread anxiety that the amended law could adversely affect the political climate surrounding the Kurdish issue," the report states. "In particular, the very wide provisions against 'propaganda' could be used to limit free speech and narrow the political space. This could well be counterproductive. As is known from past experience, strict laws in themselves do not solve much. It should be remembered that PKK terrorism emerged during the period of harsh martial laws under military rule following the 1980 coup."

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...As Do Turkish Activists, Scholars

¶14. (C) Yusuf Alatas, attorney and president of the Human Rights Association, told us he believes the draft bill is part of a broader effort by the security establishment to regain powers curtailed under recent legal reforms. Alatas averred that the long list of crimes included in the bill would give prosecutors broad leeway to assert that common criminal suspects are linked to terrorism, and thereby to try their cases in the specialized heavy penal courts that handle crimes against the state. These courts operate under special rules that favor the prosecution.

¶15. (U) Alatas is one of many human rights activists and scholars who have publicly denounced the bill as a dangerous step backward for Turkey. Umit Kocasakal, Galatasaray University criminal law professor, stated in an April interview with the daily Radikal that the bill would threaten free expression and present "a serious danger for intellectuals."

¶16. (C) Adem Sozuer, an Istanbul University criminal law professor who has advised the GOT on EU reforms, told us he is particularly concerned about the potential for the bill to increase press censorship. He said he and other legal scholars have urged leaders of the ruling Justice and Development Party to amend the law in parliament.

MP: Concerns Will Be Addressed

¶17. (U) It appears that Parliament may comply with at least some of the scholars' requests. A subcommittee of the parliamentary Justice Committee is currently reviewing the legislation. According to press reports, the subcommittee decided on May 29 and 30 to remove a number of common crimes -- such as environmental pollution, forced prostitution, and forgery -- from the list. The subcommittee also reportedly

removed a controversial article that would have authorized judges to release anti-terror forces charged with abuses pending the outcome of their trials. (Note: In practice, security forces are already nearly always tried on release. End Note.)

¶18. (C) Koksal Toptan, chairman of the parliamentary Justice Committee, told us he is aware of the concerns about the legislation, and assured us that MPs will take the concerns seriously. He indicated that Parliament may remove the language outlawing propaganda supporting the "purposes" of a terrorist organization, though he said he would await the subcommittee's report before deciding where he stands on the matter. The GOT hopes to pass the bill before Parliament begins its recess in July.

¶19. (C) Toptan acknowledged that some of the language in the bill was influenced by police and Jandarma leaders concerned that recent legal reforms have reduced their powers. He said Turkey is undergoing a radical change in its concept of criminal law: In the past, police would start an investigation by finding a suspect, and then trying to force the suspect to lead them to the evidence; under the reforms, they are required to find evidence that leads to a suspect. It is only natural that some law enforcement officials are resistant to the change, he said.

No Unified EU Position

¶10. (C) A UK Embassy contact told us European diplomats are concerned about the bill, and fear it could have a negative impact on Turkey's EU candidacy unless Parliament makes significant changes. However, she said, EU embassies have not coordinated a joint approach to the GOT. It is difficult for the EU to speak with one voice on the matter, as member

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states have divergent views regarding what legal tools are appropriate and necessary for fighting terrorism.

Comment: Bill Runs Counter to Reforms

¶11. (C) Before this bill was introduced, Justice Minister Cicek and other GOT leaders argued that Turkey did not need a new anti-terror law to strengthen its hand against domestic terrorism. Recent events support that view -- police had no trouble cracking down on demonstrators during widespread civil unrest in March and April in the southeast. Authorities arrested hundreds of demonstrators -- including over 200 minors -- and many are facing heavy criminal charges for allegedly supporting the PKK.

¶12. (C) Ultimately, the impact of the bill will depend on how it is implemented. Existing legislation already gives authorities most of the powers that critics say the bill would provide, so the effect of the bill may prove largely symbolic. But, in its current form, it would be a symbol running counter to the reform process, something Turkey can ill afford. Ambassador has raised these concerns with Justice Minister Cicek and urged him to proceed in a way that provides authorities necessary powers to counter terrorism without undermining civil liberties or the broader reform process.